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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 122

JESSE FREEMAN, *et al.*,

Petitioners,

—v.—

THE GOULD SPECIAL SCHOOL DISTRICT OF LINCOLN COUNTY, ARKANSAS, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	3
Statement	5
Jurisdiction of the District Court	9
Reasons for Granting the Writ	9
I. Certiorari Should Be Granted to Decide Whether the Constitution Affords Public School Teachers Any Protection From Arbitrary Discharge From Employment	9
II. Certiorari Should Be Granted to Determine Whether the District Court's Decision Which Resolved No Factual Disputes Accords With Rule 52(a) of the Federal Rules of Civil Procedure	15
CONCLUSION	19
APPENDICES:	
Majority and Dissenting Opinions of the United States Court of Appeals, Eighth Circuit	1a
Judgment	26a

PAGE

Decision of the District Court 27a

Decree of the District Court 30a

Detailed Summary of Testimony Concerning Termination of Petitioners' Services 31a

Table of Authorities

Cases:

Alpert v. Board of Governors of City Hospital, 286 App. Div. 542, 145 N.Y.S.2d 534 (4th Dept. 1955) 14

Carter v. Campbell, 264 F.2d 930 (5th Cir. 1959) 18

Epperson v. Arkansas, 393 U.S. 97 (1968) 11

Greene v. McElroy, 360 U.S. 474 (1959) 13

Griffin v. County School Bd. of Prince Edward County, 377 U.S. 218 (1964) 12

Gross v. Pasley, 267 F.2d 824 (8th Cir. 1959) 18

Hanifan v. United States, 354 F.2d 358 (Ct. Cl. 1965) 14

Hunter v. Scruggs Drug Store, Inc., 113 F.2d 971 (4th Cir. 1940) 18

Johnson v. Branch, 364 F.2d 177 (4th Cir. 1966) 15

Johnson v. City of Ripon, 259 Wis. 84, 47 N.W.2d 328 (1951) 14

Kelley v. Everglades Drainage Dist., 319 U.S. 415 (1943) 18

Keyishian v. Board of Regents of N.Y., 385 U.S. 589 (1967) 11

PAGE

Lerner v. Casey, 357 U.S. 418 (1958) 17

Morgan v. United States, 304 U.S. 1 (1937) 13

Ohio Bell Telephone Co. v. Public Utilities Comm'n, 301 U.S. 292 (1937) 13

Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607 (Ky. 1967) 12

Pickering v. Board of Educ., 391 U.S. 563 (1968) 11

Pointer v. Texas, 380 U.S. 400 (1965) 13

Raney v. Board of Educ. of the Gould Special School Dist., 391 U.S. 443 (1968), *reversing* 381 F.2d 252 (8th Cir. 1967) 5

Schneiderman v. United States, 320 U.S. 118 (1943) . 18

Schware v. Board of Bar Examiners, 353 U.S. 232 (1957) 14

Shelton v. Tucker, 364 U.S. 479 (1960) 10, 11, 12, 15

Slochower v. Board of Educ., 350 U.S. 551 (1956) 14

Smith v. Allwright, 321 U.S. 649 (1944) 12

Smith v. Texas, 311 U.S. 128 (1940) 12

Southern R. Co. v. Virginia, 290 U.S. 190 (1933) 13

States Marine Lines, Inc. v. Federal Maritime Comm'n, 376 F.2d 230 (D.C. Cir. 1967) 13

Tinker v. Des Moines Independent Community School Dist., —— U.S. ——, 21 L.ed. 2d 731 (1969) 11

United States v. Rasmussen, 222 F. Supp. 430 (D. Mont. 1963) 13

PAGE

Willner v. Committee on Character, 373 U.S. 96 (1963) 13, 14

Yick Wo v. Hopkins, 118 U.S. 356 (1886) 12

Constitutional Provisions:

United States Constitution
Sixth Amendment 13
Fourteenth Amendment 2, 3, 10

Statutes:

28 U.S.C. §1254(1) 2

28 U.S.C. §1343(3)(4) 9

28 U.S.C. §2201 3

42 U.S.C. §1981 3

42 U.S.C. §1983 3

Ark Stats. Ann. §80-1304(b) (Supp. 1967) 4

Rule 52(a) Federal Rules of Civil Procedure 2, 15, 16, 18

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above-entitled action January 15, 1969.

Opinions Below

The opinion of the United States Court of Appeals for the Eighth Circuit and the dissenting opinion of Judge Lay are reported at 405 F.2d 1153, 1161. They are set forth in the Appendix, pp. 1a-25a. The decision and decree of the United States District Court for the Eastern District of Arkansas, Pine Bluff Division, are unreported. They are set forth in the Appendix, pp. 27a-30a.

Jurisdiction

The judgment of the United States Court of Appeals for the Eighth Circuit was rendered January 15, 1969 (p. 26a). An order extending the time for the filing of this petition to and including May 15, 1969 was entered by Mr. Justice White on April 9, 1969. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

Questions Presented

1. Does the due process clause of the Fourteenth Amendment protect public school teachers from discharge from their employment upon a principal's unfounded and unsupported allegations of incompetence and insubordination?

2. Does the due process clause of the Fourteenth Amendment require that public school teachers be afforded a hearing and an opportunity to confront their accuser prior to their discharge from employment upon a principal's unfounded and unsupported allegations of incompetence and insubordination?

3. Where a district court, after hearing contradictory testimony from school administrative officials and discharged teachers, explicitly resolves none of the factual disputes between the parties, has the district court failed to satisfy the requirements of Rule 52(a) of the Federal Rules of Civil Procedure?

Constitutional and Statutory Provisions Involved

This case involves the Fourteenth Amendment to the Constitution of the United States.

This case also involves the following United States statutes:

28 U.S.C. §2201:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

42 U.S.C. §1981:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. §1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any

citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

This case also involves the following portion of an Arkansas statute:

Ark. Stats. Ann. §80-1304(b) (Supp. 1967)

• • •

Every contract of employment hereafter made between a teacher and a board of school directors shall be renewed in writing on the same terms and for the same salary, unless increased or decreased by law, for the school year next succeeding the date of termination fixed therein, which renewal may be made by indorsement on the existing contract instrument; unless during the period of such contract or within ten (10) days after the termination of said school term, the teacher shall be notified by the school board in writing delivered in person or mailed to him or her at last and usual known address by registered mail that such contract will not be renewed for such succeeding year, or unless the teacher during the period of the contract or within ten (10) days after close of school shall deliver or mail by registered mail to such board his or her written resignation as such teacher, or unless such contract is superseded by another contract between the parties. Provided that no contract for the succeeding school year shall be entered into between the school board

and any person prior to the beginning of the second semester of the current school year. If a teacher quits or refuses to teach in accordance with his or her contract without just cause, he or she is hereby prohibited from teaching elsewhere during the time for which he or she had been employed. Provided, that nothing herein shall prohibit any school board from entering into a two (2) year or three (3) year contract as authorized in the first paragraph of this subsection.

Statement

Petitioners are six Negro school teachers formerly employed by the Gould, Arkansas Special School District[1] who brought an action against the district in the United States District Court for the Eastern District of Arkansas on June 8, 1967 seeking declaratory and injunctive relief including their reinstatement as teachers for the school year 1967-68, damages and attorneys' fees.[2] The Complaint alleged that the school district's decision not to employ petitioners for the forthcoming school year was racially motivated, and further, that the grounds for and the manner of termination of their employment were so arbitrary and unreasonable as to deprive them of due process of law (R. 3, 6 [¶¶I, VIII]).

Although petitioners had taught in the Gould public schools for periods up to thirty-six years (405 F.2d at

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[1] See *Raney* v. *Board of Educ. of the Gould Special School Dist.*, 391 U.S. 443 (1968), *reversing* 381 F.2d 252 (8th Cir. 1967).

[2] The Arkansas Teachers Association, the professional organization to which petitioners belonged, also participated in this action as a plaintiff.

1161 n.1), each of them was notified by the Superintendent of the district about June 1, 1967 that her contract would not be renewed for following school year (R. 6, 9). The letters of notification gave no reason for the discharges. Petitioners then sought an audience before the Board of Education, which said only that in declining to renew their contracts for the succeeding school year, it was relying upon the recommendation of their principal, Horace Itty Dalton (R. 222, 224, 246). Dalton, however, had never given any of petitioners any hint that he was in any way dissatisfied with their performance as teachers (R. 259-60, 274; see also, R. 82, 98, 111, 260, 279). Dalton was not produced at either of the two audiences with the members of the school board allowed petitioners; their first opportunity to question him came when they took his deposition (R. 18-112) after the filing of this action, but prior to the second board audience. Dalton's testimony at the deposition and at the trial, as well as the original "charges" he made against petitioners in a letter to the superintendent and the board, was aptly summed up by the dissenting judge below as

> based upon conclusory, contradictory and incredible statements (footnote omitted). Plaintiffs' evidence clearly establishes that these charges of incompetency have no basis in fact (405 F.2d at 1162-63).[3]

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[3] Most of the evidence adduced at the trial and during the depositions related to Dalton's dissatisfaction with the performance of petitioning teachers, and the reasons or lack of any reasons therefor. We have summarized the testimony in considerable detail in the Appendix to this petition. Because the district court failed to make specific findings of fact, see pp. 15-18, *infra*, the extent of petitioners' disagreement with the disposition of the case can be measured only by the entire record.

Dalton's charges, and thus the man himself,[4] became the central issue at the trial. Although the official decision not to renew petitioners' contracts was made by the board, it acted upon the recommendation of the superintendent who in turn relied solely upon Dalton's letter[5] (R. 187, 197-98, 246). In fact, when the board arrived at its decision it had nothing before it except the letter (R. 222, 224). Prior to that time the board had held no meetings at which teachers in the Gould system could appear and discuss with the board members such matters as their individual com-

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[4] At the trial, several Negro pupils sought to intervene as plaintiffs in this action in order to present their claim that they were denied equal protection of the laws because the district employed an incompetent principal [Dalton] at the Negro school. Oral and written motions for leave to intervene (not printed as part of the certified record) were denied (R. 208-11, 346), and no appeal was taken. Respondents admitted, however, that Dalton was not certified as a high school administrator, and in their judgment he was qualified to be principal only of the Negro Field schools complex but not to be principal of the white Gould schools complex (R. 183, 215, 244).

[5] "... I have recommended these people for no contract.

"Mrs. Inez Nichols: 'bullheaded, goes to Pine Bluff without permission, old trends of teaching, don't adhere change of command'

"Mrs. Jesse Freeman: 'incompetent, old fashion teaching methods, keep children afraid of her, disregard modern trends of teaching, insubordination'

* * * * *

"Mrs. Earlene Woods: 'lazy, out of class everytime I visit elementary department, incompetent and neglect night activities'

"Mrs. Walker: 'after each payday she stays at home, no co-operation, insubordination, don't believe in change of command'

"Mrs. Essie Calloway: 'lazy, incompetent and non-co-operative'

"Mrs. T. N. Wilhite: 'non-co-operative, don't attend night activities, every year skin sickness; in the wrong field—Home Economics major'" (405 F.2d at 1155-56 n.2).

petence, or friction with the school administration.[6,7] Solely on the basis of Dalton's recommendations, the Board determined to discharge petitioners (R. 222, 224, 246), although at its later meeting with them, the board offered to reinstate them if they "made their peace" with Dalton (R. 6, 9 [¶X], 120, 131, 321).

At the conclusion of the trial, the district court dismissed the complaint with the comment that "I do not believe that such a frivolous and trivial matter as this, of a little fuss going on between certain people in an area down there, should be brought into the Federal Courts alleging that it is a Federal question . . . ." (R. 348-49). Petitioners appealed to the United States Court of Appeals for the Eighth Circuit, which affirmed the judgment by a divided panel. The majority rejected petitioners' claims of denial of both substantive and procedural due process:

> We do not believe this to be the law, as there are many public employees who are separated from their employment by a purely arbitrary decision, upon a change of administration or even a change of factual control where the appointments are not protected by civil service or some type of tenure, statutory or contractual (405 F.2d at 1159).
>
> Absent statutory or contractual requirements, persons discharged for inefficiency, incompetency or insub-

[6] Petitioner Wilhite stated in uncontradicted testimony that Dalton advised teachers not to discuss such matters with either the superintendent or the board because they would not be believed (R. 295).

[7] Nor had the board taken any action on complaints about Dalton made by school district patrons (R. 184, 186); the general public was not invited to school board meetings although permitted to appear (R. 194).

ordination have no constitutional rights to a hearing with rights of cross-examination and confrontation of witnesses (405 F.2d at 1161).

Jurisdiction of the District Court

The jurisdiction of the United States District Court for the Eastern District of Arkansas was founded upon 28 U.S.C. §§1343(3) and (4).[8]

Reasons for Granting the Writ

I.

Certiorari Should Be Granted to Decide Whether the Constitution Affords Public School Teachers Any Protection From Arbitrary Discharge From Employment.

The issues presented by this case are vividly framed by the majority and dissenting opinions below. The record consists primarily of charges made by principal Dalton against petitioning teachers and their denial of those charges. The district court, without resolving any of the factual disputes, held that this case involving petitioners' livelihoods was a "frivolous and trivial matter" which presented no federal question within its jurisdiction (R. 349). The majority below affirmed the district court on grounds that required no consideration of the record at all: that petitioners had no constitutional protection from the school

[8] The original Complaint and the record at page 2 erroneously show jurisdiction premised upon 28 U.S.C. §1342(3)(4). This typographical error did not mislead either of the courts below, both of which explicitly stated that jurisdiction was founded upon 28 U.S.C. §1343(3)(4) (R. 347; 405 F.2d at 1157).

district's action in not renewing their contracts, *no matter how arbitrary,* unless that action were racially discriminatory or unless the contract terminations were carried out pursuant to a statute which *on its face* invaded independent constitutionally protected rights such as freedom of speech or association (*Shelton* v. *Tucker,* 364 U.S. 479 (1960)) (405 F.2d at 1158-59).[9] Furthermore, due process did not require as a bare minimum before discharge, that teachers be permitted to respond to false or malicious charges against them (*ibid.*).

The dissenting judge below saw the case quite differently. Rejecting the constitutional doctrine of the majority, and believing that the demands of due process must be met by public school districts in their dealings with their teachers, as well as their pupils, the dissenting judge considered the record and concluded that petitioners had indeed been denied the due process of law guaranteed them by the Fourteenth Amendment, by virtue of their discharges which were arbitrary and irrational precisely because "Dalton's charges of the teachers' incompetency are based upon conclusory, contradictory and incredible statements . . . [and] have no basis in fact" 405 F.2d at 1162-63.

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[9] The majority below did not evaluate the testimony in reaching its alternative holding that "even if we were to pass upon the merits of this issue, we do not think that we could say that the Board was capricious or arbitrary . . . ." 405 F.2d at 1161. Without resolving (as the district court also had not resolved) any factual issues about the veracity of Dalton's charges against petitioners, or petitioners' charges against Dalton, the majority concluded simply that the "internal disagreement" between the teachers and the principal constituted a sufficient basis for the school district's decision to terminate the services of the teachers, without any inquiry to determine whether or not the "disagreement" related in any way to the educational program of the schools or merely reflected the whim or caprice of the principal (405 F.2d at 1161).

What is here involved is of greater significance than the livelihoods of six Negro school teachers in the Deep South (although in saying this we do not mean to disparage the protection of individual constitutional rights). In practical terms, the question is whether our public school teachers must constantly seek to curry favor with local administrators instead of directing their efforts toward educational goals, or whether the teachers shall be protected from the loss of their jobs at the mere whim of those administrators. We think the constitutional mandate that government deal fairly with its citizens extends to the teachers this modicum of shelter from arbitrariness.[10]

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[10] This Court has been solicitous to protect teachers from pressures to conform on matters outside the scope of direct educational concern. *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960) (discharge for failure to reveal associational and organizational memberships; "[m]any such relationships could have no possible bearing upon the teacher's occupational competence or fitness"); *Keyishian* v. *Board of Regents of N.Y.*, 385 U.S. 589, 603 (1967) ("... the First Amendment ... does not tolerate laws that cast a pall of orthodoxy over the classroom"); *Pickering* v. *Board of Educ.*, 391 U.S. 563, 574 (1968) ("... absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment"); *Epperson* v. *Arkansas*, 393 U.S. 97, 107 (1968) (state statute prohibiting teaching of evolution theory; "[i]t is much too late to argue that the State may impose upon the teachers in its schools any conditions that it chooses, however restrictive they may be of constitutional guarantees"); cf. *Tinker* v. *Des Moines Independent Community School Dist.*, —— U.S. ——, 21 L.ed. 2d 731 (1969).

The decision below furnishes a convenient means to avoid compliance with these decisions. For example, though selection of teachers to be discharged might proceed on the basis of improper criteria, school districts need only terminate without stating any reasons and thus evade detection. Or, districts can assert false or imaginary justifications for discharge, since under the ruling below teachers need not be given an opportunity to disprove accusations against them before they are dismissed. By permitting school districts to do indirectly what the Constitution forbids them to do directly, the ruling comes into conflict with the settled doctrine

The issue is further sharpened by the majority's distinction of several of this Court's decisions on the ground that they involved "invasion of a constitutionally protected right or privilege by way of a *statute* or *regulation*." 405 F.2d at 1159 (emphasis supplied). If the majority meant to imply either that a statute expressly permitting arbitrary and groundless teacher dismissals would be constitutional,[11] or that so long as a dismissal statute were constitutional on its face a federal court would not inquire into its application, petitioners would respectfully disagree. Either theory would result in the frustration and nullification of the constitutional rights of teachers. Such an unreviewable, unbridled discretion in an administrative body, especially one which operates in this sensitive area, is foreign to the concept of due process.

The core of the decision below is that while the Constitution would protect Arkansas teachers from arbitrary dismissals pursuant to a statute expressly permitting them, it does not protect the teachers from arbitrary dismissals based on the inherent power of school districts to hire and fire teachers. This position is simply untenable. *Yick Wo* v. *Hopkins*, 118 U.S. 356, 373-74 (1886).

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concerning protection of constitutional rights. E.g., *Smith* v. *Texas*, 311 U.S. 128, 132 (1940); *Smith* v. *Allwright*, 321 U.S. 649, 664 (1944); *Griffin* v. *County School Bd. of Prince Edward County*, 377 U.S. 218, 232 (1964).

[11] We think the same issue would be presented if a statute authorized discharge from public employment merely because a principal personally disliked a teacher, cf. *Osborne* v. *Bullitt County Bd. of Educ.*, 415 S.W.2d 607, 610 (Ky. 1967). See also *Shelton* v. *Tucker*, *supra*, 364 U.S. at 486, where this Court spoke disapprovingly of "the pressure upon a[n Arkansas] teacher to avoid any ties which might displease those who control his professional destiny . . . ."

The Eighth Circuit's view that petitioners have no rights against the arbitrariness of the Gould Special School District is in ominous contrast to this Court's view that, "[w]e have emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood. See *Greene* v. *McElroy*, 360 U.S. 474, 492, 496-97, and cases cited." *Willner* v. *Committee on Character*, 373 U.S. 96, 103 (1963).

This Court was even more explicit in *Greene* v. *McElroy*, 360 U.S. 474, 496 (1959):

> While this [evidence used against an individual must be divulged to him to permit rebuttal] is important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. [*Cf. Pointer* v. *Texas*, 380 U.S. 400 (1965) (extension of Sixth Amendment's right to confrontation to the states)].

Where administrative and regulatory actions are under attack, this Court has zealously guarded the right of confrontation, *e.g.*, *Southern R. Co.* v. *Virginia*, 290 U.S. 190 (1933); *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n*, 301 U.S. 292 (1937); *Morgan* v. *United States*, 304 U.S. 1 (1937); *accord*, *States Marine Lines, Inc.* v. *Federal Maritime Comm'n*, 376 F.2d 230 (D.C. Cir. 1967); *United States* v. *Rasmussen*, 222 F. Supp. 430 (D. Mont. 1963). In light of the fact that principal Dalton was not present at either

of the board hearings, petitioners have consistently urged that their right to be considered for reemployment in the district may not be abridged by procedures denying them the right to be apprised of the complete charges against them and to confront, in an administrative hearing, their accuser. *Cf. Schware* v. *Board of Bar Examiners,* 353 U.S. 232 (1957); *Willner* v. *Committee on Character,* 373 U.S. 96 (1963); *Hanifan* v. *United States,* 354 F.2d 358 (Ct. Cl. 1965); *Johnson* v. *City of Ripon,* 259 Wis. 84, 47 N.W.2d 328 (1951); *Alpert* v. *Board of Governors of City Hospital,* 286 App. Div. 542, 145 N.Y.S.2d 534 (4th Dept. 1955). Petitioners explicitly urged to the district court that they were entitled to relief under *Schware, supra* and *Slochower* v. *Board of Educ.,* 350 U.S. 551 (1956) (R. 346).

The record unequivocally shows that at the time petitioners were not rehired, the school board had only Dalton's charges as contained in his letter of May 1, 1967 (R. 219-220). Each charge relating to teaching performance has been denied by petitioners (see pp. 31a-44a *infra*). The judgment below cannot stand where it is clear that at no stage of these proceedings, either before the board or even in the district court, has any question of credibility been explicitly resolved. The board voted not to rehire petitioners on the naked, ungrammatical charges contained in Dalton's letter of May 1. In two hearings before the board, petitioners appeared and were confronted with different charges submitted by an absent Dalton. The district court intimated no view of any witness' credibility but merely considered this action "a fuss between certain people" (R. 348). The district court's assertion (R. 351) that the board acted within its lawful discretion is not a finding of fact

but the application of law to facts nowhere found in the decree. For aught that appears in the district court's remarks from the bench and the decree, the court may have believed every portion of petitioners' testimony, including such relevant facts as Dalton's having made indecent sexual proposals to petitioners Wilhite and Calloway (R. 142-43, 291-93, 338-39), and yet have agreed with respondents' bold assertion in their trial memorandum that "the right of a school board in Arkansas to decline to offer a new contract to a teacher is absolute" and the assertion that the board's "exercise of discretion for any other reason [but race], or for no reason at all, is fully within the rights of the school board.". Such views are in clear conflict with the requirements of the Constitution, *e.g., Shelton* v. *Tucker,* 364 U.S. 479 (1960); *Johnson* v. *Branch,* 364 F.2d 177 (4th Cir. 1966).

II.

Certiorari Should Be Granted to Determine Whether the District Court's Decision Which Resolved No Factual Disputes Accords With Rule 52(a) of the Federal Rules of Civil Procedure.

Despite the serious conflicts in testimony between principal Dalton and petitioning teachers, the "Findings of Fact" issued by the district court (R. 350-51) are nothing more than the most general, broad conclusions. "Finding of Fact" No. 2 (relevant here) is in reality a conclusion of law inasmuch as it purports to determine that the board's actions were proper under the standard established by law. The "Findings" reflect an inadequate performance by the

district court of its obligation under Rule 52(a)[12] of the Federal Rules of Civil Procedure to "find the facts specially and state separately its conclusions of law thereon . . . ."

Petitioners recognize that in the ordinary case, the lack of compliance with Rule 52(a) is not of sufficient moment to merit review by this Court. Ordinarily, the Courts of Appeals may be relied upon to supervise the performance of the district courts pursuant to the Rules and the guidelines laid down in the decisions of this Court.

We suggest, however, that this is not the ordinary case —but the extreme one, which amply demonstrates both the importance to litigants of real compliance with Rule 52(a) and the harm which litigants may suffer because of the lack of such compliance.

The instant case demonstrates how the lack of any detailed findings of fact renders appellate review more difficult. For, like the district court, the majority below did not resolve any factual dispute. Instead, it adopted the district court's view of the case:

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[12] "Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b)."

> While the findings might be more detailed, we believe Judge Harris' findings comply with Rule 52(a), Fed. R. Civ. P. (405 F.2d at 1156).

However, as pointed out *supra*, pp. 14-15, because of the extremely vague "Findings of Fact," this Court must guess whether the courts below believed petitioners' testimony but still declined to afford relief, or whether they credited Dalton's charges and on that basis sustained dismissal of the complaint.

Petitioners are also harmed beyond the mere loss of their employment, and this harm is aggravated by the failure to make specific factual findings. Petitioners were not simply passed over when contracts were to be renewed for the 1967-68 school year. Their professional abilities were attacked by Dalton. Although they have denied Dalton's charges against them, petitioners have never had an adjudication. *Cf. Lerner* v. *Casey*, 357 U.S. 418 (1958) (dissenting opinion):

> It is obvious that more is at stake here than the loss of positions of public employment for unreliability or incompetence. Rather, it is the simultaneous public labelling of the employees as disloyal that gives rise to our concern. . . . This consequence of the State's actions is devastating beside the loss of employment. In each case a man's honor and reputation are indelibly stained.

In Argument I *supra* we have suggested that due process at least guarantees that teachers' professional reputations —which necessarily affect their ability to obtain other employment—shall not be pilloried by a principal of question-

able competence and uncertain motives absent even a *pro forma* investigation of the accusations prior to discharge.[13] That injustice is continued and aggravated by the refusal of the courts below to fulfill their obligations to pass upon those same accusations and make findings. What is involved here, however, is not simply a failure to make *detailed* findings of fact but rather the failure to make *any* finding of fact which is other than wholly conclusory. The district court (R. 350-51) found only that petitioners were not discharged because of race and that the school board acted within its lawful discretion. To denominate these vague general statements as "findings" is to undermine the specificity required by Rule 52(a). While this Court might wish to reverse the district court's judgment and remand for adequate findings, *e.g.*, *Kelley* v. *Everglades Drainage Dist.*, 319 U.S. 415 (1943); *Hunter* v. *Scruggs Drug Store, Inc.*, 113 F.2d 971 (4th Cir. 1940); or retain jurisdiction while directing the entry of additional findings, *e.g.*, *Gross* v. *Pasley*, 267 F.2d 824 (8th Cir. 1959), we urge that full preservation of petitioners' rights can only be secured by a reversal and remand for a new trial because it cannot be ascertained whether the district court applied the correct legal standards, *e.g.*, *Carter* v. *Campbell*, 264 F.2d 930 (5th Cir. 1959).

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[13] On this view of the case this Court can reverse the judgment below upon concluding that a remand for additional findings is unnecessary. See *Schneiderman* v. *United States*, 320 U.S. 118, 129-31, 165 (1943).

CONCLUSION

For the foregoing reasons the writ of certiorari should be granted.

Respectfully submitted,

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